

HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR
Criminal Appeal No.3588/2021

Counsel for the Appellant : Mr. Sidharth Datt, Advocate

Counsel for the State : Mr. Prashant Mishra

Present : **Hon'ble Mr. Justice Atul Sreedharan**

O R D E R
(03/02/2022)

There is an Office objection in this case to the effect that a Criminal Appeal will not be maintainable and instead, it should be a Criminal Revision. Before dealing with the Office objection, it would be necessary to briefly appreciate the facts of this case.

2. The petitioner has preferred the present Criminal Appeal in a case which is pending before the Court of Special Judge, Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short 'SC/ST Act'), which case also includes the offences punishable under the provisions of the SC/ST Act. The charges were framed against the appellants herein under Sections 307, 302 read with Section 34 of the I.P.C. as also under Section 3(2)(v) of the SC/ST Act. The appellants wanted to challenge the order framing charges against them and therefore, they filed the present Criminal Appeal in light of Section 14A of the SC/ST Act. Section 14A (1) of the SC/ST Act being relevant for the controversy involved in this case is being reproduced hereinunder:-

"14A. Appeals – (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law."

Thus, Section 14A(1) of the SC/ST Act starts with a non obstante clause to the effect that notwithstanding anything under the Code of Criminal Procedure, an appeal shall lie from the judgment, sentence, or order, not being an interlocutory order of a Special Court.

3. In another case, where the accused were similarly situated, they preferred a Criminal Revision instead of an appeal U/s.14A of the SC/ST Act, parties being *Salman Mansuri Vs. The State of M.P.*, reported in Criminal Revision No.349/2021. In that case, the Office had taken an objection that it would a Criminal Appeal U/s.14A of the SC/ST Act which should have been filed and not a Criminal Revision. The said objection was examined by a co-ordinate Bench of this Court, which examined Section 14A and thereafter concluded that framing of a charge is an interlocutory order and therefore, a revision would lie. Thereafter, the objection so raised by the Office was ignored and the case was proceeded with. Relying upon the said order dated 03.03.2021 passed in Criminal Revision No.349/21, the Office had taken an objection in the present case that as the appellants herein have preferred this appeal against the order framing charges passed by the Special Judge, SC/ST Act, a Criminal Revision would lie, in light of

the order passed by the co-ordinate Bench in Cri.Rev. No.349/2021 dated 03.03.2021.

4. Section 397 of the Cr.P.C. empowers the High Court and the Sessions Court to call for the record of the trial court to exercise power of revision U/s.397(1). It would be apt to reproduce Section 397 of the Cr.P.C., which reads as under:-

"397. Calling for records to exercise powers of revision:

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398.

(2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

5. Sub-Section (2) of Section 397 of the Cr.P.C. clearly prohibits the power of revision being exercised in relation to any interlocutory order passed in any appeal, inquiry, trial, or other proceeding. Therefore, if the framing of

charge is an interlocutory order, then the powers of High Court or the Sessions in exercising revisional power would be barred in view of Section 397(2) of Cr.P.C.

6. As to what constitutes an interlocutory order has consistently attracted the attention of the courts. In **Amarnath and others Vs. State of Haryana**¹, the Supreme Court was examining if an order summoning an accused to stand trial was an interlocutory order, not amenable to a revision? In a complaint case, the Magistrate had directed the police to investigate into the allegations in the complaint. Police filed a report absolving the prospective accused persons. Magistrate accepted the report and dismissed the complaint. On revision to the Court of Sessions by the complainant, the case was remanded to the Magistrate for further enquiry. The Magistrate straight away issued summons to the accused who approached the High Court in revision against the summons issued against them. The High Court dismissed the revision *in limine* holding that the order of the summoning was an interlocutory order and therefore not amenable to revision in the light of s. 397(2) Cr.P.C. The supreme court held in paragraph 6 **"It seems to us that the term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important**

¹ (1977) 4 SCC 137

rights or liabilities of the parties. Any order which substantially affects the right of the accused or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which, no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court."

7. In **Madhu Limaye Vs. State of Maharashtra**², the Supreme Court while examining the true import of the phrase "interlocutory order" in s. 397 (2) Cr.P.C held that the same cannot be restrictive in the sense, it cannot be construed that all order that are not final order are interlocutory for if such an interpretation is resorted to, it would negate the legislative intent in giving power of revision to the High Court and the Sessions Court. The

² (1977) 4 SCC 551

Supreme Court placed orders that are not final orders but still amenable to the revisional jurisdiction u/s. 397 Cr.P.C, in the category of "intermediate orders".

8. Thus, any order that affects the rights of the parties cannot be deemed to be an interlocutory order, but the same would be an intermediate order. An order framing charges affects the right of an accused, where it compels an accused to stand trial in a case where he can show that the material in the chargesheet do not even reveal a prima facie case against him and that he deserves to be discharged. Therefore, an order framing charges is not an interlocutory order and so, u/s. 14A of the SC/ST Act, an appeal would lie.
9. The objections raised by the office is rejected. **List on 10/03/22.**

(Atul Sreedharan)
Judge